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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,164	12/22/2003	Edward J. Rupnick	EJR-003	7747

7590

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EXAMINER

WILLIAMS, JAMILA O

ART UNIT	PAPER NUMBER
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3722

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,164

Applicant(s)

RUPNICK, EDWARD J.

Examiner

Jamila O Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 8/23/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: LYKES REFERENCE

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: In line 5 of the claim there is a lack of antecedent basis for "the support member surfaces". Appropriate correction is required.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by 5,988,173 to Scruggs. Scruggs discloses a substantially thin and rigid support member (18) having substantially flat spaced apart upper and lower surfaces extending between first and second edges (fig 2), elastic retaining means (fig 2, elements 30,34) having means for anchoring (36) to the support member surfaces adjacent to the respective edges (via slot members 14 attached to the edges of the support member 18). Scruggs further discloses having one or more hook shaped mechanical edge grippers (36) secured to the elastic retaining means (30,34). The recitation of a "book page holder device" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion

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of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v Robie*, 88 USPQ 478 (CCPA 1951).

Claims 1,2,4,9,14,15,16,17,18 rejected under 35 U.S.C. 102(b) as being anticipated by '128 to White. White discloses a substantially flat and rigid support member (14) having first and second spaced apart edges, an elastic retaining means (52) having means for anchoring (61, see figure 5) first and second opposite ends thereof adjacent the respective first and second spaced apart edges of the support member, as recited in claim 1; wherein the anchoring means comprises one or more hook shaped mechanical edge grippers (fig 5), as recited in claim 2; wherein the support member comprises a substantially rigid material (column 3 lines 48-50), as recited in claim 4; wherein the book page holder comprises a support member, an elongated resilient elastic retainer having first and second anchors provided adjacent to respective first and second opposite ends thereof, the anchors being structured to secure the first and second opposite ends of the elastic retainer, as recited in claim 9; wherein the support member is formed of a rectangular plate including two spaced apart edges (fig 3), as recited in claim 14; wherein the support member comprises means for compacting the support member (fig 1), as recited in claim 18.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,5,7,8,9-10,12 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over of 2,807,908 to Lykes in view of 5,722,691 to Patel. Lykes discloses a rigid support member (7) formed with opposing edges and an elongated resilient elastic retainer to extend between the edges, as recited in claim 1, with anchors (9) to secure the elastic retainer, as recited in claims 8-9 ; wherein the elastic retainer is structured to pass through the passages of the elongated bar (fig 1-2), as recited in claims 10 and 23; wherein the support member comprises two spaced apart passages adjacent the opposing edges and wherein the passages comprise an aperture formed through the thickness of the support member and positioned adjacent an edge thereof (column 2 lines 46-50), as recited in claim 12.

Lykes does not however disclose that the support bar (7) has a flat cross section. Patel provides a teaching of having a substantially flat support member, it would have been obvious in view of this teaching to make the support bar of Lykes in a substantially flat configuration for the purpose of providing a firmer connection between the book and the support bar.

3. Claims 6,11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lykes in view of Patel. Lykes discloses all of the elements of the claims but for the use of a slot at the edge of the elongated bar for connecting the elastic retainer thereto. Patel teaches the use of slot in the in the elongated bar for attaching the retainers 42,62 thereto. It would have been obvious to use slots in the support bar of Lykes as opposed to apertures for the purpose of providing a better connection between the elastic member and the support bar.
4. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lykes in view of Patel. Lykes discloses a support member (7) having opposing edges with an elongated resilient elastic retainer extending therebetween via anchors (9). Lykes does not however disclose that the support member is substantially flat nor that the support member comprises a compacting means. Patel provides a teaching for having a support member that is substantially flat and a means for folding the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teachings of Patel (to make the support member flat and foldable) for the purpose of providing a better connection between the book and the support member and for the purpose of making the support member portable.
5. Claim 3,15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of '589 to Schwartz. White discloses all of the elements of the claims including having first and second anchors on each end of the elastic retainer. White does not however disclose the use of a fabric covered elastic

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material. Schwartz teaches using a retaining means that is fabric covered (column 4 lines 41-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the fabric covered elastic material teaching of Schwartz with the retaining means of White for the purpose of providing a more durable retainer. Thus providing the elastic material with a slippery contact surface, as recited in claim 15.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over '128 to White in view of 4,462,614 to Krause. White discloses all of the elements of the claims as applied to claim 9 above, but does not disclose the use of metal for the support member. Krause teaches using metal for a page marker (or support member). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the material of Krause with the support member of White for the purpose of making the support member more stiff or rigid.

Response to Arguments

Applicant's arguments filed 8/23/2004 have been fully considered but they are not persuasive.

Regarding the argument that White does not disclose a "substantially thin, support member having substantially flat spaced apart upper and lower surfaces", the examiner maintains that White satisfies this claim limitation. The fact that the support member of White includes peripheral ridges 54,57 does not prevent it from being

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substantially flat. the language of the claim does not require the member to be uniformly flat throughout.

Regarding the argument that the gripper of White is not hook-shaped. The language of claim 2 only requires that the anchoring means comprises one or more hook shaped edge grippers secured to the elastic retaining means. The examiner maintains that the gripper 61 includes a portion that is "hook shaped" (i.e. the portion that is folded or hooked onto the elastic member in figure 5).

Regarding the argument that polypropylene as taught by White is not a "substantially rigid material" the examiner respectfully disagrees and maintains the rejection. The device of White is rigid to the extent that it can support a book and serving as a writing support.

Regarding the Lykes reference, the examiner has included a copy of this reference for applicants review. The correct patent number for this reference is 2,807,908, however on the first and second pages of the patent the number appears as, 2,808,908.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This is simply art of interest and was not used to reject any claims in this office action.

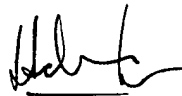
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila O Williams whose telephone number is 571-272-4431. The examiner can normally be reached on Mon-Fri 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jw



Jacob K. Ackun
Primary Examiner